

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4132 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

BAI DASRIBEN WD/O UKHABHAI NATHABHAI

Versus

SUKHRAO A MARATHE

Appearance:

Shri R.A. Patel, Advocate, for the Petitioner

Shri Harin P. Raval, Advocate, for Respondent No.

1

Shri T.H. Sompura, Asst. Govt. Pleader, for Respondent No. 2

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 05/08/96

ORAL JUDGEMENT

The order passed by and on behalf of the State Government on 3rd September 1979 under sec. 211 of the Bombay Land Revenue Code, 1879 (the Code for brief) is

under challenge in this petition under art. 227 of the Constitution of India. By the impugned order, the State Government quashed and set aside the order passed by the Collector of Bharuch (respondent No.2 herein) on 6th October 1978 in Revision Application No. 158 of 1978. By his aforesaid order, respondent No. 2 set aside the order passed by the Deputy Collector (Tenancy) at Bharuch on 10th July 1975 declaring the sale transaction between the petitioner and respondent No. 1 executed on 17th December 1964 to be not in contravention of sec. 73A of the Code.

2. The facts giving rise to this petition move in a narrow compass. The dispute centres round one parcel of land bearing survey No. 58 admeasuring 10 acres 1 guntha situated at Village Dhanshera taluka Sagbara district Bharuch (the disputed land for convenience). It originally belonged to the petitioner herein. It appears that she agreed to sell it to respondent No. 1 and the necessary sale agreement was executed on 5th January 1963. Pursuant thereto, the necessary sale document was executed on 17th December 1965. It appears that respondent No. 1's name was entered into the revenue record as its occupier. It appears that the sale transaction in question came to the notice of the Deputy Collector (Tenancy) at Bharuch. He appears to have found it in contravention of sec. 73A of the Code. Thereupon he issued show-cause notices to both the petitioner and respondent No. 1 herein calling upon them to show cause why the transaction should not be declared to be void as contravening sec. 73A of the Code. After hearing the parties, by his order passed on 10th July 1975, the Deputy Collector came to the conclusion that the transaction between the parties was not in contravention of the aforesaid statutory provision. He thereupon discharged the notices. Its copy is at Annexure A to this petition. That aggrieved the petitioner. She carried the matter in revision before respondent No. 2. It came to be registered as Revision Application No. 158 of 1978. By his order passed on 6th October 1978, respondent No. 2 accepted the petitioner's revisional application and set aside the order at Annexure A to this petition. Its copy is at Annexure B to this petition. That aggrieved respondent No.1 herein. He carried the matter in further revision before the State Government under sec. 211 of the Code. By the order passed by and on behalf of the State Government on 3rd September 1979, the State Government accepted the revisional application and set aside the order at Annexure B to this petition. Its copy is at Annexure C to this petition. The aggrieved petitioner has thereupon approached this Court

by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure C to this petition.

3. Learned Advocate Shri Raval for respondent No. 1 and learned Assistant Government Pleader Shri Sompura for respondent No. 2 have submitted that this petition deserves to be rejected on two preliminary objections. According to both of them, this petition suffers from the vice of inordinate delay on the part of the petitioner. Secondly, runs their submission, the petitioner has suppressed the material fact regarding receipt of the order at Annexure C to this petition long back. As against this, learned Advocate Shri R.A. Patel for the petitioner has urged that the petitioner did not receive the order at Annexure C to this petition, and as such there is no delay on the part of the petitioner.

4. Learned Assistant Government Pleader Shri Sompura for respondent No. 2 has kept some official from the office of the author of the order at Annexure C to this petition present with the record of the case. On perusal thereof, it is found that the order at Annexure C to this petition was served to the petitioner by registered post A.D. some time in the first week of October 1979. The record contains the acknowledgment bearing the thumb impression of the petitioner herein duly returned to the office of the author of the order at Annexure C to this petition by the Postal Department. The thumb impression is also found to have been identified by some person on the acknowledgment. In that view of the matter, there is no escape from the conclusion that the order at Annexure C to this petition was served to the petitioner some time in the first week of October 1979. The impugned order at Annexure C to this petition was passed as early as on 3rd September 1979. The present petition has been filed nearly 8 years thereafter as late as on 20th August 1987. The explanation of this inordinate delay to the effect that the impugned order at Annexure C to this petition was not served is not found to be correct. In that view of the matter, there is no escape from the conclusion that inordinate delay of nearly 8 years on the part of the petitioner for challenging the impugned order at Annexure C to this petition has not at all been explained. This petition therefore deserves to be rejected on this ground alone.

5. Since I am taking this view, it is not necessary to decide whether or not the petitioner is guilty of suppression of the fact regarding receipt of the impugned

order at Annexure C to this petition some time in the first week of October 1979. It is obvious that the petitioner has suppressed this fact from this court in view of my aforesaid discussion. In fact, this petition can be said to be suffering from the vice of suppressio veri and suggestio falsi. That would also be a ground for rejecting this petition as the petitioner by her conduct has disentitled herself from claiming any discretionary relief under art. 226 of the Constitution of India.

6. In view of my aforesaid discussion, I am of the opinion that this petition does not deserve to be accepted in view of the aforesaid preliminary objections.

7. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs.
